In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 116

LANE-WELLS COMPANY, A CORPORATION, AND TECHNICRAFT ENGINEERING CORPORATION, A CORPORATION, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The petition in this case should be considered in conjunction with the Government's petition in *Helvering* v. *Lane-Wells Company*, No. 115. Each petition seeks review of the same judgment, which was partly in favor of the Government and partly in favor of the taxpayer.[1]

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[1] The taxpayer, Technicraft Engineering Corporation, a California corporation, had transferred all its assets in 1937 to the petitioner Lane-Wells Company, and it has been stipulated (R. 65) that the latter is liable as transferee for any taxes which may be found to be due from Technicraft.

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The Commissioner had determined that the taxpayer corporation was liable for the additional corporate tax imposed upon personal holding companies by the Revenue Acts of 1934 and 1936. He also ruled that the taxpayer was subject to the 25% penalty for failure to file personal holding company returns on Form 1120 H, as required by the Treasury Regulations. The taxpayer challenged the Commissioner's determination in the Board of Tax Appeals, *inter alia*, upon the following grounds: (a) that it was not a personal holding company within the meaning of the statute, and therefore was not liable at all for personal holding company taxes; (b) that, in any event, even if it were a personal holding company, the regular corporate returns which it had filed on Form 1120 were sufficient to relieve it of the 25% penalty; and (c) that the filing of the returns on Form 1120 was sufficient to start the running of the statute of limitations in its favor, with the consequence that all liability was barred as to at least one of the years involved, 1934.

The Board decided each of these three questions adversely to the taxpayer. The Circuit Court of Appeals affirmed the Board on the first question, agreeing that the taxpayer was a personal holding company subject to tax as such. It ruled, however, that the returns which had been filed on Form 1120 were sufficient to relieve the taxpayer of the penalty and were sufficient to start the run-

ning of the statute of limitations in the taxpayer's favor.

The Government's petition for certiorari seeks review of the rulings below on points (b) and (c). As to that portion of the decision below there is a square conflict, for it has been held in other circuits that the failure to file a return on Form 1120 H is not overcome by the filing of a return on Form 1120. There is, however, no conflict whatever with respect to the separate question raised by the petition herein, as to whether the taxpayer was a personal holding company. That question was correctly decided by both the Board and the court below upon the basis of the peculiar facts in this record, and does not call for review by this Court.

Section 351 (b) (1) of the Revenue Act of 1934 requires, *inter alia,* that a corporation receive "at least 80 per centum of its gross income * * * from royalties, dividends, interest, annuities, and * * * gains from the sale of stock or securities," in order that it may be classified as a personal holding company. The question herein is whether certain amounts received by the taxpayer from other corporations constitute "royalties." It is not contested that those amounts exceeded 80% of its income, so that if they are to be treated as "royalties," there is no dispute that the taxpayer was a personal holding company. The taxpayer owned various patents and processes and

it had entered into arrangements with certain related corporations whereby it received 15% of their gross receipts for the use of these patents and processes. Such formal documents as set forth the arrangements between the taxpayer and the other corporations explicitly referred to these payments as "royalties." There was ample evidence to support the Board's determination that these payments were royalties, and the question is certainly not one for further review here.

The petition should be denied.

Respectfully submitted,

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